

IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MARK LANGFORD,

Petitioner,

CASE NO. 2:06-cv-619

CRIM. NO. 2:01-cr-071

JUDGE SMITH

MAGISTRATE JUDGE ABEL

v.

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On June 8, 2007, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. §2255 be dismissed as barred by the one-year statute of limitations. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**, and this action hereby is **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his §2255 petition as time-barred. Petitioner complains that the Magistrate Judge improperly raised the issue of statute of limitations, because respondent failed to raise the issue in the Return of Writ; however, a District Court is permitted, but not obligated, to *sua sponte* address the timeliness of a federal habeas corpus petition. *Day v. McDonough*, 547 U.S. 198 (2006). Additionally, petitioner appears to argue that he exercised diligence within the meaning of *Johnson v. United States*, 544 U.S. 295, 310 (2005), in attacking his underlying state court convictions used to enhance his sentence because he raised the issue at the time of his sentencing. Still, as noted by the Magistrate Judge, the record reflects that although petitioner knew at sentencing that his prior state court convictions were being

used to classify him as a career offender, he waited more than two and one half years to file a motion to vacate these convictions in the state trial court. *See Exhibit A* to Petition. Petitioner asks “to be allowed an opportunity” to address the issue of statute of limitations. *Objections*, at 2. Petitioner has been provided with such opportunity in his objections to the Magistrate Judge’s *Report and Recommendation*.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to by petitioner. For all of the foregoing reasons, and for the reasons detailed in the Magistrate Judge’s *Report and Recommendation*, petitioner’s objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED** as barred by the one-year statute of limitations.

IT IS SO ORDERED.

/s/ George C. Smith

GEORGE C. SMITH

United States District Judge